IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

JUDGMENT

1. Smt. Sushila Vyas **VS**. Satya Narain Vyas

D.B. CIVIL MISC. APPEAL NO.856/2001
against the judgment and decree dated 31.7.01 passed in Civil Original Suit No.109/96 by the Family Court, Jodhpur.

2. Satya Narayan Vyas **Vs**. Smt. Sushila

D.B. CIVIL CROSS OBJECTION NO.29/2003
in D.B. Civil Misc. Appeal No.856/2001

Date of judgment : 3rd April, 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P. VYAS

Mr. S.D. Vyas for the appellant in appeal No.856/01

Mr. P.C. Sharma for the petitioner in C.O. NO.29/03

Mr. Haidar Aga for the respondent.

BY THE COURT:- (Per Hon'ble Mr. Rajesh Balia, J.)

Heard learned counsel for the parties.

The appeal and cross-objection are directed against the judgment and decree passed by the Family Court on an application of husband under Section 13 of the Hindu Marriage Act, 1955 for dissolution of marriage between the parties. The decree of dissolution of marriage was passed on 31st July, 2001.

According to the averments made in the application, the marriage between the parties was solemnized at Jodhpur on 9.12.1985. It was alleged by the husband that on the very first day of marriage, the wife accused the applicant that he was having illicit relation with his sister. It was first act of mental cruelty inflicted on the respondent-husband and, therefore, from the very beginning, the foundation of marriage was laid on bitterness. The appellant-non-applicant wife left the matrimonial home after 19 days and started living with her parents/brothers. It was also stated that during 9 and half years of marriage, she had intermittently remained for few days only with her husband. Most of time she had stayed with her parent's house and was asserting to live with full liberty of leaving the

matrimonial home and coming back as and when she desired and that she was not willing to make a matrimonial home with the applicant. She indulged time and again in casting aspersions on the mother and sister of the applicant which caused serious mental torture to husband which has affected his mental as well as physical health. She has also indulged in levelling allegations against the husband and members of his family about raising demand of dowry from her parents, which were totally false. Also she falsely alleged that the mother-in-law and sister-in-law had put her sari on fire and attempted to kill her. The continued insistence on living separate from mother and divorced sister which was not acceptable to him, looking to his own duties to his mother and sister, has also caused great harassment to the respondent-husband. She has also gone to the extent of calling the sister as prostitute and his house as house of carrying a illicit profession. All these allegations have lowered his reputation in society and has given him mental torture which comes within the purview of cruelty in law.

It was further stated that the non-applicant-wife had lodged a complaint against the applicant-husband, his mother and sister under Section 498A and 406 I.P.C. in pursuance of which her mother and sister remained in custody for some time.

In nutshell, keeping in view the allegations made by wife about husband's illicit relation with his sister and continuous allegations against the character of the mother and sister of the applicant amounted to practice cruelty against the applicant by the non-applicant, which makes him entitled to a decree of dissolution of marriage.

The appellant-non-applicant-wife denied the allegations levelled against her. On the contrary, she alleged that not she, but her husband has levelled allegations against wife on the marriage date about her pre-marriage affairs and advised her to forget the past. She denied having any ill-will against the applicant, his mother and sister and also that not she, but he compelled her to leave her matrimonial home by hook

and crook. She denied the allegations that she had abstained from discharging her matrimonial obligations and also denied that she had levelled any false allegations but she admitted that she did file complaint under Section 498A against her husband and members of his family and it was true that the husband, mother and sister has asked the non-applicant to bring Rs.40,000/- from her parents, and also it is true that the applicant has assaulted with knife and her mother-in-law and sister-in-law has conspired to put her sari on fire and all allegations made in the application are only for the purpose of securing divorce.

The case was once referred to Lok Adalat for reconciliation or arriving at a negoted settlement. The proceedings of 31st October, 1996 reveals that Lok Adalat tried to bring the peace between the parties but without success.

After the failure of the aforesaid efforts, the reply was called from the non-applicant. The two issues were framed, firstly, whether the non-applicant has

committed any act alleged against her in para 4 to 11 of the application which amounts to cruelty and if so whether the applicant is entitled to a decree for divorce. The issue No.2 was relating to relief.

After considering the material which has come on record, the learned Judge, Family Court found that the allegations levelled by the wife against her husband that there exists illicit relationship between her husband and his sister on the marriage day and has consistently alleged against the character of sister of her husband stand proved and the allegations of these types had constituted an act of cruelty as it amounted mental torture on the person against whom such allegations have been levelled.

As a matter of fact, in the complaint filed under Section 498A, the allegations about leading an immoral life by the sister of her husband finds place and that supports to the allegations made in the application. The complaint under Section 498A was not found maintainable by the Investigating Agency. From this

also, the learned Judge, Family Court inferred that making such wild and baseless allegations against the husband and his family members also amounts to mental cruelty. It is an admitted case that the appellant has levelled allegations against her husband that he had attacked on wife with knife and also that mother-in-law and sister-in-law tried to put her on fire which according to wife were truthful allegations against the husband. However, the basis for such allegation has not been proved on record. It was also found on the basis of statement that getting away from matrimonial home and living at her parents home, the appellant non-applicant wife was guilty of committing cruelty and affecting his health mentally and physically and affecting his status in the society amounts to an act of mental cruelty on the part of the appellant-wife and consequently, the decree for dissolution of marriage was passed.

Before taking the matter for hearing, we had called the parties and have tried for reconciliation but there was no tentacles of warmth left exist between the parties and the efforts proved abortive.

After hearing the parties and perusing the material on record, we are further of the opinion that finding of fact reached by the learned Judge, Family Court about the fact that wife had alleged the illicit relationship exists between her husband and his sister that she had charged sister of her husband to be living immoral life and had falsely implicated her husband and members of his family under Section 498A which resulted in confinement of mother and sister of the applicant, are amply proved. In fact, the making of allegations under Section 498A about immoral conduct of the sister of the husband and other consequences flowing from that application are not in dispute. Ultimate result of the application are not the facts in dispute which corroborate the oral testimony.

In the aforesaid circumstances, we do not find any merit in this appeal.

In the recent decision of the Supreme Court in A. Jayachandra Vs. Aneel Kaur **2005 SCW 163** conceded the

ambit and scope of expression “cruelty” in the context of matrimonial disharmony had said that there cannot be any strait jacket formula for determining the question of such ground for culpable cruelty which may provide ground for dissolution of marriage. Their Lordships explained the ambit and scope of expression “cruelty”, used in relation to human conduct and human behaviour in expansive manner. The Court said:-

> “The expression 'cruelty' has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it

> is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be inquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

While not laying down in exhaustive manner as to what amounts to a mental cruelty, the Court explained that:-

> "It must be something more serious than 'ordinary wear and tear of married life'. The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law."

However, the Court emphasised that :

> "It must be of the type as to satisfy the

> conscience of the Court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party."

It cannot be gain said that the foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy a relationship what is said to have been made in heaven. All quarrels must be weighed from that point of view, in determining what constitutes cruelty in each particular case and as

noticed above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives.

On merit of the case before the Supreme Court in A. Jayachandra Vs. Aneel Kaur **2005 AIR SCW 163,** the Court noticed that on the surface of the matter, the wife had asked the husband to do which cannot be simply considered as advice for proper behaviour. The Court was of the opinion that in evidence respondent clearly accepted that she had said five things to be followed by him. Surprisingly, most of them related to ladies working in the hospital. Though respondent tried to show that they were simple and harmless advice, yet on a bare reading thereof it was clear that there were clear manifestations of her suspecting the husband's fidelity, character and reputation.

The court found that for disharmony,

diffusion and disintegration of matrimonial unity, was as a result of wife's nagging suspicious behaviour and past litigation conduct of wife further shows that marriage has broken irretrievable when it found that :-

> "Contrary to what she had stated about having full faith in her husband the so called advices were nothing but casting doubt on the reputation, character and fidelity of her husband. Constantnagging on those aspects, certainly amounted to causing indelible mental agony and amounts to cruelty....
>
> .... In the instant case, after filing of the divorce petition a suit for injunction was filed, and the respondent went to theextent of seeking detention of the respondent. She filed a petition for maintenance which was also dismissed. Several caveat petitions were lodged and as noted above, with wrong address. The respondent in her evidence clearly accepted that she intended to proceed with the execution proceedings, and prayer for arrest till the divorce case was finalized. When the respondent gives priority to her profession over her husband's freedom it points unerringly at disharmony, diffusion

> and distintegration of marital unity, from which the Court can deduce about irretrievable breaking of marriage."

In these circumstances, reversing the judgment of the High Court, sustained the decree passed by the family court for dissolution of marriage.

This is one illustration of settled principle that ordinarily casting of nagging aspersions on the loyalty of the husband amounts to cruelty, which may pave the way for disintegration of matrimonial unity.

Similarly, if the female members of the husband family are still subjected to immoral conduct by the wife particularly when the relationship between woman concerned and the sister of the husband and mother of husband is not a matter of simple suspicion but grave enough to cast a continuous torture in the minds of spouse. As a matter of fact, such allegation amounts to causing mental agony consistently resulting in disturbances of peace of the spouse against whom

such allegations have been made.

We are of the opinion that allegation of immoral on the very first day of the marriage by charging the husband having illicit relation with none other than but his own sister and then continuous attempt on the moral conduct of his sister, who was living with him results in mental cruelty causing constant agony in the mind of husband.

Coupled with the fact that two attempts of reconciliation having failed shows that the marriage has been broken and cannot be restored. In these circumstances, we see no reason to interfere in the decree passed by the Family Court.

Consequently, the appeal fails and is hereby dismissed. There shall be no order as to costs.

So far as the cross-objection filed by the wife, it is informed by the learned counsel for the respondent that she moved an application for

enhancement of maintenance which by way of relief for maintenance was granted by the Family Court vide judgment under appeal and that application is still pending. Obviously, the question of enhancement, if it existed after 31st July, 2001, the same shall be considered by the Family Court.

In view of the aforesaid statement of Shri Haidar Agha, Shri P.C. Sharma does not press the cross-objection with a view to pursue the application for enhancement before the learned Judge, Family Court.

[R.P. VYAS], J. [RAJESH BALIA], J.

babulal/